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GOVERNOR

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

James W. Parker, Chair

Cynthia S. Bertocci
Executive Analyst

Ruth Ann Burke
Board Clerk

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

September 17, 2015

A meeting of the Board of Environmental Protection was held on Thursday, September 17, 2015 at the Augusta Civic Center, 76 Community Drive, Augusta, Maine. James Parker, Chair, called the meeting to order at 9:00 am with the following individuals present:

Board: Alvin Ahlers, Thomas Dobbins, Mark Draper, and James Parker. Thomas Eastler was absent. There are two vacancies.

Staff: Mark Bergeron, Director, Bureau of Land Quality
Jeffrey Crawford, Office of the Commissioner

Others: Avery Day, Acting Commissioner
Peggy Bensinger, Assistant Attorney General
Mary Sauer, Assistant Attorney General
Cynthia Bertocci, BEP Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

Draft Pending Board Approval

I. Departmental

- A. **Commissioner's Comments:** Acting Commissioner Avery Day introduced himself to the Board members. He noted that former Commissioner Aho has accepted a position with Senator Collins. He also noted that Melanie Loyzim, Director of the Bureau of Remediation and Waste Management has accepted a position in the private sector. Lesley Anderson, who has been the Department's Director of Innovation, is stepping in as Acting Bureau Director.
- B. **Comments from the BEP Chair:** None.
- C. **Executive Analyst Comments:** Ms. Bertocci noted that the next Board meeting is scheduled for October 15, 2015.
- D. **Board Calendar:** Reviewed.
- E. **Departmental Orders / Applications Accepted for Processing:** Reviewed
- F. **Executive Session:** None

II. Consent Agenda Items:

1. BEP Meeting Minutes: July 16, 2015 (approval)

The Board voted (3-0-1-1) on a motion to approve the minutes for July 16, 2015 as presented. The vote was taken pursuant to 38 M.R.S. § 341-D.

Board members Alvin Ahlers, Mark Draper, and James Parker voted to support the motion. Board member Thomas Dobbins abstained. Board member Thomas Eastler was absent. There are two vacancies.

III. Regular Agenda Items:

1. Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters / Amendments

Staff: Jeffrey Crawford, Office of the Commissioner

Mr. Crawford noted that Chapter 2 is a procedural rule of the Board and Commissioner; therefore, this is a joint rulemaking proceeding. Mr. Crawford reviewed the proposed amendments including those pertaining to electronic filings and review of permit-by-rule notifications. The proposed amendments to the transfer of ownership provisions have been removed in response to comments received. Transfer of ownership issues are complex and require further consideration. There were no additional public comments at the meeting.

The Board voted (4-0-0-1) on a motion to adopt the proposed amendments to Chapter 2 as presented. The vote was taken pursuant to 38 M.R.S. §341-H.

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, and James Parker voted to support the motion. Thomas Eastler was absent. There is one vacancy.

Following the vote of the Board, Acting Commissioner Avery Day adopted the routine technical amendment to Chapter 2 as presented pursuant to 38 M.R.S. § 341-H.

2. Juniper Ridge Landfill Expansion / Recommendation for Board Jurisdiction
Staff: Cynthia Bertocci, Board Executive Analyst
Cynthia Darling, Bureau of Remediation and Waste Management

At the beginning of the agenda item, Board member Mark Draper noted for the record that he is the Solid Waste Director for the Tri-Community Recycling Facility and Sanitary Landfill in Fort Fairfield. He stated that he does not believe he has a conflict of interest. He further stated that he believes he can fairly and objectively participate in review of the application if the Board were to assume jurisdiction. There were no objections to Mr. Draper's participation.

Ms. Bertocci reviewed the statutory criteria for Board jurisdiction over a licensing application. Ms. Darling provided a summary of the landfill's history and the proposed project. Acting Commissioner Day then stated that he concurred with former Commissioner Aho's preliminary finding that the project meets 3 of the 4 criteria for a project of statewide significance and, accordingly, the criteria for Board licensing jurisdiction.

The Board then heard comment from Thomas Doyle, attorney for the applicant State of Maine Bureau of General Services (BGS) and landfill operator NEWSME Landfill Operations, LLC. The applicant did not oppose the Board taking jurisdiction, but requested that the Board process both the Natural Resources Protection Act application and the Solid Waste application for the project concurrently as part of a single proceeding. The applicant also requested that a schedule for processing the applications be established and requested a hearing during the first half of 2016. The applicant stated that it needs to begin construction in 2018 if the application is approved.

The Board also heard comment from interested persons Charles Leithiser and Edward Spencer. They suggested that it may be advisable to have the Commissioner and staff process the application in the first instance, with any appeal coming to the Board.

Mr. Dobbins made a motion, seconded by Mr. Ahlers, that the Board assume licensing jurisdiction over the applications by BGS for expansion of Juniper Ridge Landfill and hold a public hearing.

Acting Commissioner Day asked for clarification regarding the provision in 38 M.R.S. § 341-D(2) regarding referral by the Commissioner. Assistant Attorney General Mary Sauer stated that if the Board finds that 3 of the 4 criteria are met, the statute requires that the Board take jurisdiction.

Mr. Dobbins stated a desire to amend his motion. Mr. Ahlers withdrew his second, Mr. Dobbins withdrew his motion. Mr. Dobbins then moved that the Board determine that at least 3 of the 4 criteria in 38 M.R.S. § 341-D(2) for Board jurisdiction have been met, making the project one of statewide significance, and that the Board assume jurisdiction over the applications. Mr. Ahlers seconded the motion. The Board voted (4-0-0-1) on the motion. The vote was taken pursuant to 38 M.R.S. §341-D(2) and 06-096 CMR 2 § 17.

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, and James Parker voted to support the motion. Thomas Eastler was absent. There are two vacancies.

Chair Parker then requested a motion regarding whether the Natural Resources Protection Act and Solid Waste Applications would be handled jointly. The Board voted (4-0-0-1) on a motion by Mr. Dobbins that the applications be processed jointly with one public hearing. The vote was taken pursuant to 38 M.R.S. §341-D(2) and 06-096 CMR 2 § 17.

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, and James Parker voted to support the motion. Thomas Eastler was absent. There are two vacancies.

3. Site Location of Development: Proposed Amendments to the following Rules:

- Chapter 373 Financial Capacity Standard of the Site Location Law
- Chapter 375 No Adverse Environmental Effect Standard of the Site Location Law
- Chapter 380 Long-Term Construction Projects.

Staff: Mark Bergeron, Director, Bureau of Land Licensing

Mr. Bergeron reviewed the proposed amendments and requested that the Board post the amendments for public hearing.

The Board voted (4-0-0-1) on a motion to post the proposed amendments for a public hearing on October 15, 2015 or at such other time as determined by the Chair in consultation with Department staff. The vote was taken pursuant to 38 M.R.S. § 341-H and § 481 et seq.

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, and James Parker voted to support the motion. Thomas Eastler was absent. There are two vacancies.

4. Informational Session: Update on Changes to the Wind Energy Act

Assistant Attorney General Peggy Bensinger reviewed recent amendments to the Wind Energy Act including changes enacted by LD 828 (Public Law 2015 c. 265), LD 911 (Public Law 2015 c. 190), and LD 1244 (Public Law 2015 c. 264). These amendments include, among other provisions, provisions establishing a mechanism and criteria to remove a specified place in the unorganized and deorganized areas of the state from the expedited permitting area; additional criteria for assessment of visual impact; and a permitting requirement and criteria for small-scale wind energy development.

(The meeting adjourned at approximately 10:30 a.m.)